with care without being forced into a definite position with regard to the subject-matter the author is there treating. It would have helped materially had Dr. Carter defined the "entity" under discussion as he does certain other chameleonic terms. Omission to do that has led in the discussion to baffling shifts from "corporation" as a group of people with a common interest, to "corporation" as a creature of the law. That the group of stockholders is a reality within the meaning of the term in normal human experience few men would deny; that when they embark capital in common in a common enterprise they acquire a new common interest with reference to which they are, within a reasonable meaning of the term, an entity, in real existing fact: a thing to some extent different from the sum of them severally, taken without the common interest—this also is believed to link up with our experience. But the existence of the group and of their common interest, and the desirability of machinery to enable them to do business conveniently to advance their common interest—all of which are *facts*—is in no wise to be confused with the machinery which the law sets up to accommodate them in the matter. An organized society, acting through its officers appointed to declare and administer its rules of life together, says to the group of stock-holders: "With reference to this wealth you have pooled, you may act as if you all together were a single individual distinct from any of you; and you may act through agents, whose powers, for your protection, must be given and exercised in a specified, orderly way." This is the creation of legal machinery, and nothing more. Thereafter, to state that the acts of the corporators or their agents, done in the prescribed fashion, have legal effect largely *as if* done by a new, distinct person, is to state a truth; but to state that there *exists* a new distinct person is to mistake a complex of legal rules for the fact whose existence the rules merely simulate for the sake of uniformity with the rules as to real persons. And if, instead of persons, we speak of entities, we can nevertheless find no real *entity* in that legal machinery, nor does the machinery create a separate corporate entity. What real entity there is, in any normal meaning of the term, is the group of corporators (together, often, with their agents, and the wealth they have pooled) and nothing more. Separate from the individuals such entity may in some measure be, so far as men in a group with a common interest may reach conclusions and do acts which they would not do each alone. Such a hypothesis as this is believed to serve the purposes a legal hypothesis should serve: it can explain the facts, all the facts, of the decisions; its adoption in further decisions would force consideration of the real issues, force a conscious compromise between the demands of actual economic conditions and the requirements of precedent. If study and thought over Dr. Carter's work leads men even to seek earnestly such a hypothesis—whether it be the above or another—then Dr. Carter's work is good, whether or not his own conclusions be accepted.

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Problems of Law: Its Past, Present, and Future. By John H. Wigmore. New York, Charles Scribner & Sons, 1920. pp. viii, 136. $1.50.

This volume comprises three lectures given by Dean Wigmore on the Barbour-Page Lecture Foundation at the University of Virginia in 1920. The lectures are entitled "Problems of the Law's Evolution"; "Problems of the Law's Mechanism in America"; "Problems of World Legislation and America's Share Therein."

The first lecture begins with an analysis of law, which the author separates into its four essential elements, namely, A, "Human conduct relations"; B,

"The formal element—Mode of affecting Conduct" by (a) "a uniform or regular quality of behavior as contrasted with a variable or arbitrary sequence of acts"; (b) "by compulsion as contrasted with purely voluntary behavior"; and (c) "by state power giving the force in this compulsion as contrasted with social opinion."

The author then passes to a consideration of the fundamental elements of legal evolution. He reaches the conclusion that legal evolution implies (a) movement, although not necessarily progress; (b) that this movement is a variable, not a constant; (c) that there is no universal formula which can describe the process of legal evolution.

This form of statement of the essential elements in law is unfamiliar, not to say puzzling, until the reader discovers that the author is only presenting in somewhat unusual form the generally accepted notion that law deals with human conduct, that it selects only certain essential facts as a basis for the application of its rules and thus gives to those rules uniformity and generality, and finally that law has state sanction.

After some reference to the attempts of various philosophers to give a graphic or geometrical description of legal evolution, the author advances the novel suggestion that the most complete analogy to the forces of legal evolution is furnished by the planetary system with its numerous local interdependent motions.

He then proceeds to illustrate the applicability of this analogy in elaborate detail by reference to the principles of physics which are exemplified in the gyroscope.

That the evolution of our legal system has involved movement or change; that this change has not been constant and that our legal system is a resultant of an extremely complex combination of social forces, is familiar learning to the student of law. The author's analysis, therefore, does not carry us very far toward a better understanding of the intricate problems of legal evolution. Nor will the students be encouraged by it to seek their solution in a more extended investigation of either the gyroscope or the solar system. The author, however, does place a very proper emphasis on the fact, which both students and teachers of law are prone to under-emphasize, that the study of the substantial elements of law begins always with social facts and institutions and that legal evolution is virtually inseparable from the evolution of social habits.

This lecture makes some interesting suggestions as to the method to be adopted in order to secure scientific results from an investigation of legal evolution.

"Any rigidly scientific results must be based on at least the following elements: Taking a single idea or institution, its forms must be traced (1) in two or more successive epochs for the same communities; (2) then in two or more communities in successive epochs; (3) then the other legal institutions in the same communities and epochs must be mapped out, so that the connection if any may be disclosed; (4) then the main social forces in the same communities and epochs must also be mapped out, so as further to detect the possible causes of difference; (5) the whole must be conceived of as a simultaneous movement of forces" (p. 51).

It is admitted that what is here proposed is an ideal to be looked forward to and that its realization is as yet impracticable for lack of adequate data. The author's application of this method to a study of the *form* of declaring law and the *organs* for declaring law tends to encourage the doubt whether the rigid application of this method will result in formulating any scientific law of legal evolution of general application other than that law is the resultant of social forces and that its evolution will be materially influenced by social evolution.

The second lecture deals with the problems of law-making by legislation and by judicial decision, and raises the very pertinent question from the viewpoint of legal analysis and philosophy why the judge in administering law should be

bound either by legislation or by precedent. He also deals with the related questions, why the legislator in enacting legislation should attempt to go into details and how far legislation should attempt to provide for future change of conditions. Of course the answer to the last two questions must necessarily depend upon the power to be given to the judicial officer to modify or extend the operation of statutes. A perfect case can be made out in legal theory—as indeed the author does make it out—for conferring upon the judiciary as a body of large experts the authority to limit or disregard both precedent and legislation. That the modification of established legal doctrine by judges would be more scientific, more thoroughly considered and would produce more just results than modification of law by legislators who are not expert and who do not give to legislative problems the study and careful consideration given to legal problems by judges, is not open to doubt. If such power were to be conferred upon judges, many other interesting questions which are not discussed are suggested by the author's proposal, such for example as the desirability of giving power to the judges to limit the *ex post facto* effect of judicial decisions overturning precedent or admittedly amending statutes by interpretation and the method by which such limitation would be accomplished.

Interesting as are the questions raised by this lecture, one cannot recall the history of legislation and constitutional amendment in the United States, limiting the powers of judges and tending to subject them more and more to popular control, without realizing that they are purely speculative questions and are likely to remain so for a long time to come. There is no indication to be discovered in American history for a least a hundred years past that the people will ever be willing to confer upon judges whose tenure of office is sufficiently long to ensure their being a body of experts, the power of legislation as that term is applied to the functions of legislative bodies. If their tenure of office were shortened so as to bring the judges under practically the immediate control of the people by popular elections at frequent intervals, as are our legislators, it can hardly be supposed that judges would be more expert than legislators or more devoted to the scientific development of law than are legislators.

Moreover such a proposal, while emphasizing and expanding the law-making power of the courts, leaves out of account their primary function of settling with reasonable expedition the rights of private litigants. Litigation is now a sufficiently formidable undertaking to give one pause before resorting to it. But if the prospective litigant were to contemplate the necessity of adequately debating, for the public good, the question whether a given statute should or should not be modified by judicial decision and whether such amendment should be applied *ex post facto* to him, he might well be filled with dismay. It is not intended by this suggestion to deny that a frank recognition of the fact that judges do make law is desirable or that some enlargement of that power as it is habitually exercised would improve our law. It is only intended to point out some of the grave difficulties which would attend any such radical and sweeping change of the judicial function as that proposed; difficulties so great that the attempt to overcome them would not only endanger our judicial system, but tend to destroy the certainty and generality which the author regards as essential elements of law.

It would be an interesting and it is believed a desirable experiment to confer upon the court of last resort in a given jurisdiction express statutory or constitutional power to modify or limit its own precedents and the power in its discretion also to limit the *ex post facto* operation of such decisions. If such power were given and its exercise encouraged by constitutional or legislative enactment, there can be but little doubt that it would tend to remove from our common law many of the anachronisms which tend to work injustice and which experience has taught it is extremely difficult to cancel in satisfactory manner by legislation.

The last lecture deals with the subject of securing uniform legislation by the co-operation of the states with foreign governments. A stumbling block to such co-operation is found in the fact that Congress has no constitutional power to adopt uniform legislation relating to those subjects which are within the reserved powers of the states. On the other hand, under Article I, section 10 of the Constitution, the several states have no power to enter into agreements or compacts with foreign states. The remedy suggested is that this power be conferred upon them pursuant to Article I, section 10 by consent of Congress. The recommendation is that Congress could by a general law give its consent in advance that a state may make a compact with one or more foreign powers upon a specified subject of law. That duly accredited delegates of the states be sent to attend conferences with the representatives of foreign powers, that such conferences adopt drafts of proposed uniform laws, that when adopted the delegates present the drafts to their several states for adoption, and that thus uniform legislation will be secured.

Anent this proposal two suggestions may be made. The states of the United States are now forbidden by constitutional enactment to enter into compacts with each other without the consent of Congress. Nevertheless it has been found possible to secure uniform legislation which has been widely adopted throughout the United States by the simple process of appointing delegates to attend a conference on uniform laws. It has not been found necessary that the states should enter into compacts for the enactment of these laws or that the states should appoint duly accredited diplomatic representatives to accomplish this purpose. The adoption of the proposed uniform laws by the conference and the recommendation that it be enacted into law by the several states have been found sufficient to secure the general adoption of the more important laws proposed by the conference. No reason is apparent why, if there were any desire to secure such legislation the several states could not appoint delegates to meet in conference with the delegates of foreign nations to recommend uniform legislation for adoption by the states and by the foreign countries concerned precisely as is now done by the conference on uniform laws.

On the other hand, the proposal to confer upon the separate states the power to enter into compacts with foreign governments raises a most serious question with respect to the diplomatic relations of the United States with foreign countries. During the entire history of the country there has been no exercise by a state of the power to enter into a compact with any foreign nation, because, it is believed, it has been clearly perceived that such an exercise of power by the individual states would be inherently subversive of national unity and because it would tend to create the impression abroad of a fundamental weakness in the federal government to conduct its foreign affairs. The importance of preserving unimpaired the complete control of all international relations by the national government would appear to be of far greater importance than any legislation which might be secured through the power of individual states to exercise the treaty-making power. Once embarked on such a policy it would be difficult to say where we should end, and what subjects might be deemed to be within the permitted authority to agree upon uniform legislation. The presence of the diplomatic representatives of the foreign governments at the capitals of our several states, intent upon securing compacts with the states, would not tend to give unity or dignity to our foreign relations, which must necessarily be under the direction and control of the central government, if we are to preserve its integrity and authority as a truly national government. We doubt whether this proposal will commend itself to Congress. Nor is it believed that there is any solid ground for urging it until a serious effort has been made to secure uniform legislation by the conference method.

By these lectures Dean Wigmore will, as always, stimulate thought and provoke

discussion. It is fortunate for the legal profession and for the future development of the law that we have men like him, fertile of suggestion, and of inquiring mind, to question things as they are, to shake conservatism and stimulate the desire for a better knowledge of our legal system and for its improvement. Caution and conservatism may raise objections to the particular method proposed, but such objections, if valid, will only encourage the proposal of better and more effective methods. A more thorough understanding of legal evolution, better methods of securing modification of law, and the facilitating of uniform legislation are greatly to be desired. We are indebted to Dean Wigmore for having stimulated the desire and opened the discussion of these important questions.

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1921 Supplement to Federal Income and Profits Taxes. By George E. Holmes. Indianapolis, The Bobbs-Merrill Co. 1921. pp. xxiv, 539.

Federal income tax law is developing so rapidly that although Mr. Holmes' valuable treatise on the subject appeared only in 1920 [see review in 1920 (30 YALE LAW JOURNAL, 104)] it is necessary to issue this sizable volume in order to bring the subject down to date. In the main the additions are only of new authorities, but the chapter on War Profits and Excess Profits Tax has been entirely re-written, and has undergone a sixty-five per cent expansion in the re-writing. The additional information thus presented on this labyrinthine subject is very valuable. Another particularly commendable feature of this volume is the complete system of references to the authorities of the government's own revenue system, which have appeared in the federal Income Tax Bulletin Service, such as Solicitor's Opinions, Advisory Tax Board Recommendations, Committee on Appeals and Revenue Recommendations and Office Decisions. To all those who have to deal with federal income tax matters, aid of the careful, comprehensive and painstaking character of these two volumes by Mr. Holmes is a necessity.

C. E. C.

The Relation of the Judiciary to the Constitution. By William M. Meigs. New York, The Neale Publishing Company, 1920. pp. 248. $2.00.

Thirty-five years ago Mr. Meigs made a pioneer excursion into the antecedents of the American doctrine of judicial review. Others have since followed the trail that he blazed, and now he in turn sums up for us the results of their explorations. His primary motive is that of the propagandist. As he tells us in the Introduction: "There is the gravest danger that this noisy minority will lead the country . . . to launch out upon evil ways. . . . It is the conviction of this danger that has led me once more to take up the subject of Judicial Power" (p. 10). This fear helps to explain the author's sermonizing and his frequent blurring of the distinction between precedents for judicial review of the acts of a co-ordinate legislature, and those which merely illustrate the control of central and superior authorities over subordinate local agencies. Not that Mr. Meigs does not perceive the distinction. He refers to it every now and then. Yet often his zeal leads him to fight in favor of the Supreme Court's control over Acts of Congress with weapons that have point only in favor of that tribunal's control over state statutes alleged to conflict with the federal Constitution. For logical analysis, readers should turn from Mr. Meigs to the more closely-reasoned essays of Mr. Corwin and of Mr. McLaughlin.

Analytical shortcomings should not blind us to the convenience of having the